

### **C. MISREPRESENTATION OF THE LONG DISTANCE BENEFITS OF LEC ENTRY**

BellSouth's claims about the competitiveness of PCS rest on a fundamental assumption of irrational behavior on the part of consumers. The empirical analysis deceives by distortion of scale. BST's claim about long distance competition exhibit similar characteristics. BST's claim that entry will produce substantial consumer savings are similarly misleading.<sup>36</sup> BST consciously uses different and conflicting price assumptions to mislead policy makers.

#### **1. BELL SOUTH'S CONFLICTING STATEMENTS ABOUT RATES**

BST has filed testimony that contradicts its own claims (see Table 4). BST has promised

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<sup>36</sup>Schwartz, Marius, "The 'Open Local Market Standard' for Authorizing BOC InterLATA Entry: Reply to BOC criticisms, Supplemental Affidavit on Behalf of the U.S. Department of Justice," November 3, 1997.

In fact, for the *off-peak* callers that make up the bulk of the residential market, SNET and GTE do *not* offer the best interLATA rates available in their respective territories, *for any customer calling volume.*<sup>a/</sup> For *on-peak* calling, competing carriers also have lower rates than GTE *for most service levels*, while the comparison of their rates with those of SNET's is mixed.<sup>b/</sup>

<sup>a/</sup> As mentioned, GTE's best off-peak rate plan is a straight 14 cents/minute, anytime rate. For off-peak callers, AT&T, Sprint, and LCI all offer rates that beat GTE's by 30-35%. Sprints and LCI's respective off-peak rates of 10 cents and 9 cents/minute dominate SNET's offers. (Sprint rebates a further 10% off the bill for customers spending at least \$25/month who maintain service for a year.) AT&T's 10 cents per minute off-peak rate matches SNET's.

<sup>b/</sup> MCI beats SNET's best on-peak offer for customers with lower calling volumes. Sprint's, AT&T's, and LCI's respective off-peak rates of 10 cents, 10 cents, and 9 cents/minute dominate SNET's offers. (Sprint rebates a further 10% of the bill for customers that maintain service for a year.) For customers using under \$25 per month, MCI's 12 cents/minute anytime beats SNET's 15 cents/minute anytime rate. At calling volumes over \$50 per month, SNET's rates are the best of the major players', *standard* offers for callers with heavy on-peak use, with the advantages around 10% at \$50 per month; less at greater volumes. However, SNET's penetration at high calling volumes is disproportionately small, perhaps because of the competitive importance of IXC's promotional calling plans offering very substantial additional savings at these calling volumes.

**TABLE 4**  
**CONFLICT REFERENCES TO LONG DISTANCE PRICES IN**  
**BELLSOUTH TESTIMONY**

**BELLSOUTH WITNESSES**

AT&T UNDISCOUNTED*	18.9
BST TARIFF**	17.0
AT&T DISCOUNTED*	15.0

**DOJ WITNESS**

OTHER DISCOUNT ***	12.0-14.0
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\*Schmalensee, \*\* Gilbert, \*\*\*Schwartz

reductions of 5 percent,<sup>37</sup> which are cited by some of its witnesses, but the witnesses that estimate consumer savings use figures that are three to four times as large.<sup>38</sup> BellSouth has claimed consumer savings, which are impossible to achieve, because it has not offered tariffs that will support its claims. Moreover, these reductions are much smaller than price discounts recognized by other BellSouth witnesses as *already available in the marketplace*.<sup>39</sup>

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<sup>37</sup>Gilbert, p. 18, cites tariffs and other witnesses as follows:

BellSouth has filed a proposed tariff for long distance service containing rates which would undercut AT&T's basic rates by 5%.

<sup>38</sup>Hausman, p. 11, uses price differences of 18 percent attributed to SNET.

Using the estimated number of AT&T customers on a discount plan, I find that overall SNET residential prices were about 18.4% less than AT&T's prices on average.

<sup>39</sup>Schmalensee, pp. 8... 9, shows that the average discount available in BellSouth states in 1996 was over 15 percent and admits that the available discounts are larger today.

Every ratepayer who signed up for BellSouth's tariffed discount would be paying at least 10 percent more, and on average about 40 percent more, than they would have to pay if they took a discount already available in the marketplace. BST may get long distance customers, but it will not be because it is offering a better price and it cannot claim any price benefit for consumers. Such irrational behavior cannot be assumed to prevail in the marketplace and BellSouth's claim to entry based on this assumption should be rejected.

The flaws in the BST claims about its own tariffs extend to its analysis of the competitive offerings of those local exchange companies (GTE and SNET) that have been allowed into in-region long distance. The DOJ has presented a vigorous and precise refutation of BST's benefits claims.<sup>40</sup> The DOJ has shown that BST and the RBOCs are far off the mark in their estimates (see Attachment 2 Chapter 1, section A.2).

- o Just as marketers use fraudulent and misleading comparisons in their advertising, BST's witness compare the lowest discounted price offered by LEC entrants into the long distance market to the competitors' highest undiscounted rates, forgetting that there is a great deal of discounting already in the market.
- o BST's discounts are actually no larger than many observed in the marketplace.

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For all BellSouth states combined, the average discount off basic rates on a dollar of residence AT&T toll calls in 1996 was only 15.6 percent...

The interexchange carriers have introduced calling plans with flat per-minute rates; an example is AT&T's One Rate plan, which charges 15 cents per minute regardless of distance or time of day... The average rate was about 18.9 cents per minute. Since 15 cents under the One Rate Plan is lower than 18.9 cents, the One Rate Plan might be attractive to many residence customers today who are paying basic rates...

The One Rate plan would not benefit all residence customers, however... The new plan would not benefit many customers who are already on another plan. For instance, a True Reach customer who already receives a 25 percent discount would typically pay more under the One Rate plan.

<sup>40</sup>Schwartz, pp. 32..34.

- o BST uses different prices for different purposes. BST's hired external witness assumed discounts that are three times larger than BST officials were willing to commit to.
- o BST also assumes that all customers use the same amount of long distance service. In fact, the few customers who could save by switching from an undiscounted rate to a discounted rate consume much less, so their savings have been overestimated.
- o BST also ignores the fact that substantial parts of the country and Louisiana are served by local exchange companies that are already allowed to sell long distance.<sup>41</sup>

When these mistakes are eliminated, the overwhelming majority of consumers are not likely to save a great deal as a result of BST entry into the long distance market.

Figure 2 shows the areas where the LEC offering would be attractive on the basis of price. As with the PCS example, we observe that the target market is a small, atypical set of consumers. Therefore, BST's claim to large direct price benefits from early entry are incorrect. The public interest benefits claims by BST for early entry are non-existent.

### **C. THE CAUSES OF THE FAILURE OF LOCAL COMPETITION**

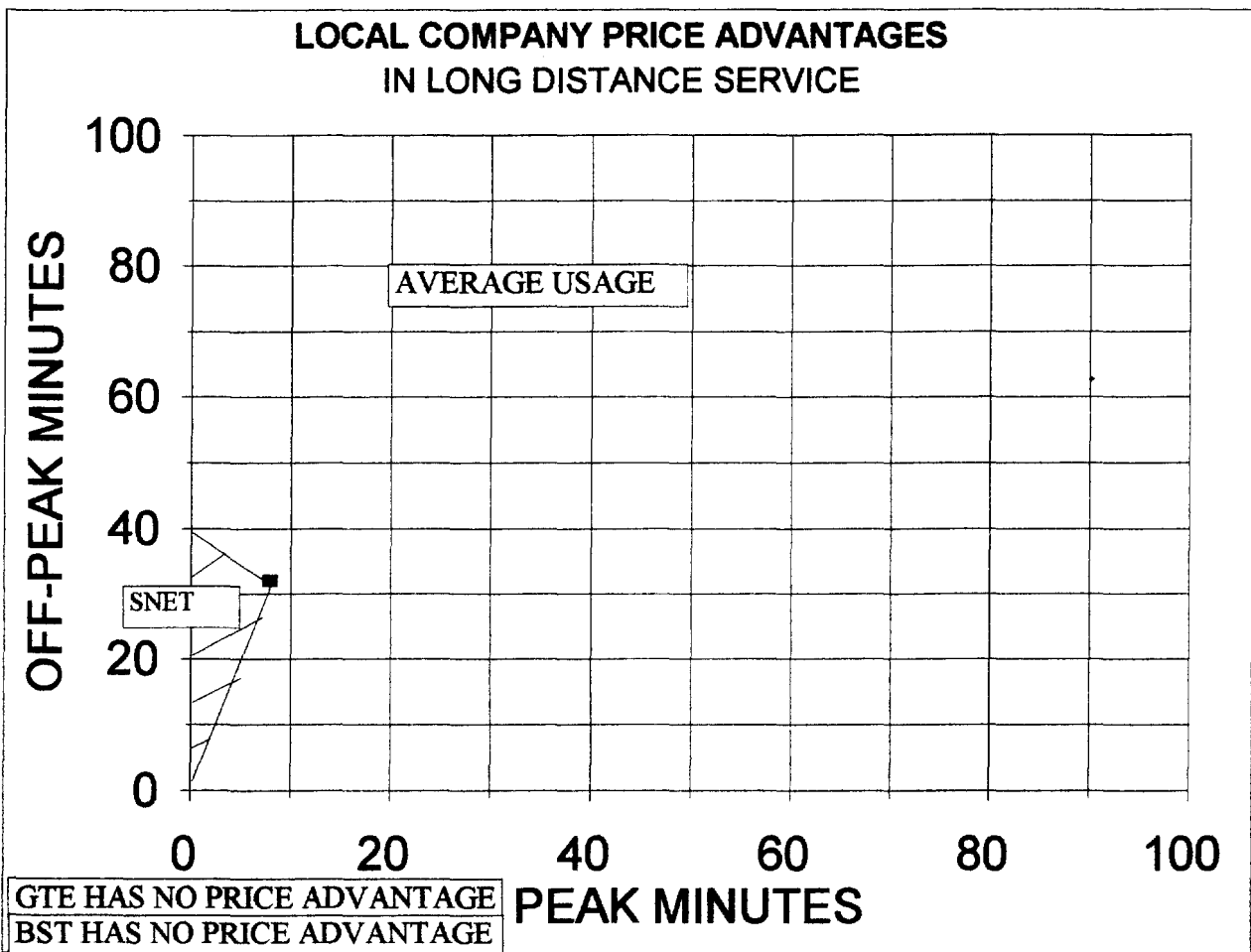
Given the clear and convincing evidence of a lack of competition in local markets in Louisiana, the causes of the failure of local competition under the 1996 Act have moved to the center of both the public policy and public relations battlefield<sup>42</sup> BST claims that local

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<sup>41</sup>DOJ Louisiana, Appendix A, demonstrates that the response by BellSouth fails to refute any of the central conclusions from South Carolina.

<sup>42</sup>In early November 1997, the United States Telephone Association (USTA) began running adds in Washington D.C., targeting the FCC decision on whether to allow RBOC entry into interLATA long distance. Previously, BellSouth had apparently orchestrated a letter writing campaign to the FCC (see Bureau of National Affairs: Regulation, Law & Economics, October 6, 1997 and National News, October 15, 1997, for press accounts.

FIGURE 2



competition has not been created because the long distance companies are gaming the regulatory process and not trying hard enough to get into the local market. BST alleges that the long distance companies do not want the RBOCs to get into long distance. BST has offered a behavioral theory to explain the lack of local competition which claims that hundreds of companies -- *the RBOCs included* -- have conspired to refuse to enter the local residential market in order to prevent the RBOCs from entering the long distance market. BST has not tried to prove this charge before any state commission, a right it has under the Act.

Simple logic refutes this claim and the evidentiary record in this proceeding demonstrates that BST has made it extremely difficult to enter the local market. The alternative explanation for the failure of local competition to develop is that BST has simply not complied with the law and persisted in creating and defending barriers to entry into the local market that make it impossible for new entrants to compete.

There is a fundamental problem in the process by which the opening of the local network to competition has been progressing and the core of the problem is the unwillingness of the RBOCs to make the process work. RBOC cooperation is crucial, but BST has singled out potential competitors and made it extremely difficult for them to enter the market (see Attachment 2 Chapter 1, section B.1). The Florida staff concluded that

BST has yet to develop the ability, and by the testimony of its witnesses, the mind-set, to provide all facets of interconnection as required in the Act in a timely and efficient manner.<sup>43</sup>

Both the Consumer Advocate in South Carolina and the DOJ found evidence of similar intransigence on the part of BST. Examples of this problem abound in the evidentiary record in

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<sup>43</sup>Florida Staff, p. 83.

St. Louis is an attractive market, but they propose to enter not as a facilities based carrier but as a reseller.

For all the complaining about long distance companies strategically refusing to compete, not one RBOC has come forward to make a showing that potential competitors are failing to negotiate in good faith or failing to meet their schedules. All the RBOCs need do is prove the claims they have been making in the press before the state public utility commission and they will overcome the first hurdle to entry. None has done so.

**D. LOCAL COMPETITION IS THE KEY TO PROTECTING THE PUBLIC INTEREST UNDER THE TELECOMMUNICATIONS ACT OF 1996**

Perhaps because the evidence demonstrates so clearly that BST has not met the terms of the Act and has no grounds to escape its requirements, BST has devoted a great deal of effort to seeking to convince the Commission to abandon its approach to section 271 by arguing that the public interest would be better served by early entry of RBOCs into long distance even if barriers to entry in the local market have not been fully removed.<sup>44</sup> The Commission should reject this argument not only because, as discussed above, the BOCs bring little benefit with entry into long distance, but more importantly because it is crucial to ensure effective local competition.

Consumers, especially residential consumers, need competition in both local and long distance, but they need it a lot more in local for several reasons. The RBOC arguments are wrong not because the long distance market would not be improved by an increase in competition, but because local markets are in much greater need of a dose of competition. Allowing local entry into long distance too soon could severely set back competition throughout the industry in both

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<sup>44</sup>Hausman

local and long distance (see Attachment 2 Chapter 1 section A.1).

Local competition has barely begun and it has yet to be placed on a firm basis. Because local service is a hundred year old monopoly, the practices, policies and actions of the local companies make it extremely difficult for new entrants to get into the market and compete against the entrenched incumbents. Regulators have had fifteen years to build protections against anti-competitive actions in the long distance market, they have had less than two years to do so in local and they are no where near an open local market anywhere in the country. Incumbents retain market shares in excess of 99 percent in virtually all markets (see Chapter 3 and Attachment 1, Chapter 1).

The local market is twice as large, has never been subject to competition and has had its profits largely deregulated (see Attachment 2 Chapter 1, section A.3). CFA estimates that for every one dollar of savings consumers might realize from increased competition in long distance, there are four or five dollars that might be gained as a result of introducing competition into the local market). Therefore the inefficiencies and excess profits that are embedded in local rates are much larger, we estimate between five and ten times as large, and only competition will get them out.

The problem of premature entry of RBOCs into in-region long distance should be seen to include more than the quantified value of price cuts. Premature entry has a number of anti-competitive implications that would deal a severe blow to local competition (see Attachment 2 Chapter 1, section A.4).

- o RBOCs would lose their incentive to cooperate in opening their markets to competition.



- o Premature entry allows the RBOCs to be the only entity that can offer an attractive integrated bundle of services.
- o Premature entry drives competitors to use resale as the primary approach to competition, since that is the easiest alternative, but it is the form of competition that provides the least threat to incumbents.
- o Premature entry forces regulators to rely on policing post-entry behavior which is much more difficult to implement to promote and protection competition than imposing pre-entry conditions on the RBOCs.

Competition based on resale of local service, which is the inevitable result of premature entry into long distance, simply will not support price competition in local. As a result of premature entry, consumers will lose effective competition in both local and long distance. Because local service is the core of any bundle of telecommunications services -- the first stop in one stop shopping -- if local companies get into long distance before their is effective competition for local, they will grab market share in long distance without having to compete on price in local service. They will simply offer bundles and trade on their incumbency. That is the actual experience where local companies have been allowed to enter in-region long distance. That is exactly what has happened in those cases where the local companies have been allowed to get into long distance in their home territories. The loss to consumers from a failure to ensure a sound basis for local competition far outweighs any benefits from increased competition in long distance.

### **III. THE COMPETITIVE CHECK LIST**

Recognizing that competitors would have to interconnect with the incumbent local exchange companies to offer local service and that competitors would find it difficult to supply many of the functionalities necessary for local service, the Congress imposed a series of obligations on the RBOCs (see Table 5). The competitive checklist is an impressive array of obligations that reflect the extremely complex and integrated nature of the modern telecommunications network.

Congress did more than identify specific items that had to be made available. It specified the terms and conditions on which they had to be offered. It used broad language to require just, reasonable and nondiscriminatory availability. There are two crucial aspect to this problem.

#### **A. JUST AND REASONABLE PRICES**

One major condition Congress placed on the RBOCs was the price at which they had to be offered. The importance of price is obvious. In its South Carolina comments DOJ offered the observation that if a competitor does not have certainty about price, investment and commitments cannot be made (see Attachment 2 Chapter 3, section A. 1).

Expectations concerning future prices can be as important, or even more important, than current prices. A market will not be "irreversibly" opened to competition if there is a substantial risk that the input prices on which competitors depend will be increased to inappropriate levels after a section 271 application has been granted. Such price increase obviously could impair competitive opportunities in the future. As important, a substantial *risk* of such a price increase can impair competition *now*. Competitors that wish to use unbundled elements in

TABLE 5  
THE COMPETITIVE CHECKLIST

Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following:

- (I) interconnection in accordance with the requirements of section 251 (c)(2) and section 252 (d)(1).
- (ii) non-discriminatory access to network elements in accordance with the requirements of sections 251 (c)(3) and 252(d)(1).
- (iii) non-discriminatory access to the polls, duct, conduits, and right-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224.
- (iv) local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.
- (v) local transport from the trunk side of a wire line local exchange carrier switch unbundled from switching or other services.
- (vi) local switching unbundled from transport, local loop transmission, or other services.
- (vii) non-discriminatory access to -
  - (I) 911 and E911
  - (II) directory assistance services to allow the carriers customers to obtain telephone numbers; and
  - (III) operate a call completion services.
- (viii) white pages directory listings for customers on the other carrier's telephone exchange service.
- (ix) until the date by which telecommunications numbering administration guidelines, plan, or rules are established, non-discriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.
- (x) non-discriminatory access to databases and associated signaling necessary for call routing and completion.
- (xi) until the date by which the commission issues regulations pursuant to section 251 to require number portability, interim telecommunications number portability through a remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations.
- (xii) non-discriminatory access to such services or information as unnecessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251 (b)(3).
- (xiii) reciprocal compensation arrangements in accordance with the requirements of section 252 (d)(2).
- (xiv) telecommunications services available for resale in accordance with the requirements of section sections 251 (c)(4) and 252 (d)(3).

combination with their own facilities will incur significant costs when they invest in their own facilities. Such investment will not be forthcoming *now* if there is a substantial risk that increases in the prices for complementary assets, i.e. unbundled elements, will raise the competitors total cost to a degree that precludes effective competition.<sup>45</sup>

In Louisiana, permanent prices were not adopted until late October 1997, less than two weeks before BST filed for entry. The absence of permanent prices may go a long way toward explaining why there had not been any competition until that point.

Unfortunately, the prices that were set are not likely to establish a basis for competition. The LPSC ignored the recommendations of the ALJ on a number of key points that affect all aspect of the analysis. These include technology assumptions,<sup>46</sup> depreciation rates,<sup>47</sup> joint and

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<sup>45</sup>DOJ BST, p. 40.

<sup>46</sup> ALJ, Cost (p. 23):

Finally, with regard to network design assumptions utilized in the costing analysis, we are convinced by the reasoning of the Michigan Commission and the FCC that the most rational and procompetitive approach to the issue is to assume the existing location of BellSouth's switching and outside plant facilities, while further assuming the complete replacement of those existing facilities with the most efficient, least cost technology currently available, as of the time of the costs studies are conducted.

<sup>47</sup>ALJ Cost, p. 39,

Further, we find that BellSouth's proposed depreciation rates do not reflect forward looking costs, and are inadequate for the purposes of this proceeding, as the depreciation lives are based upon the company's embedded network and are admittedly designed to recover shareholders investments. We are not persuaded that the FCC favors recovery of embedded costs through depreciation rates, but, in any event, disagree with such a conclusion.

Neither are we satisfied with using the Louisiana specific FCC rates or the FCC ranges for depreciation purposes in this proceeding, as neither was develops based solely on TELRIC principles.

We direct that BellSouth conduct a current depreciation study which complies with TELRIC principles.

common costs.<sup>48</sup> Although the Department of Justice raised a number of specific concerns, it felt the general methodology was appropriate.<sup>49</sup> The ALJ pointedly noted the underlying problem, which the DOJ did not address, is not the methodology, but the assumptions and inputs used to estimate costs.

One principle which garners such consensus, however, is the "trash in = trash out" theory, meaningful in these proceedings as "bad input" (into any costing methodology = "bad output" and vice versa). What the parties here largely dispute is what the correct inputs to the Commission's costing analysis should be. Similarly, while the parties do not dispute the use of the Commission-required LRIC/TSLRIC costing analyses as a basis of the rates to be established, they are not in agreement concerning the makeup of LRIC/TSLRIC costs.<sup>50</sup>

The specific areas where prices were not believed to be appropriate by both the DOJ and the ALJ include the failure to deaverage loop costs,<sup>51</sup> the cost of collocation,<sup>52</sup> and the cost of

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<sup>48</sup> ALJ Cost, p. 43,

However, while we are interested in achieving shared and common cost inputs which most accurately reflect a forward looking marketplace, we conclude that there is insufficient evidence in the record to support the propriety of the specific adjustments recommended by Ms. Desmukes and insufficient evidence of a better alternative to the shared and common cost calculations proposed by BellSouth.

<sup>49</sup>DOJ Louisiana, pp. 22-23.

In Louisiana, BellSouth's pricing for unbundled elements is in most respects consistent with the Department's focus on pro-competitive pricing principles. Significantly, BellSouth's permanent prices for interconnection, unbundled elements and transport and termination, recently approved by the LPSC, were developed from a study by the LPSC staff consultant according to the TSLRIC/LRIC rate making requirements that the LPSC adopted after the Telecommunications Act was passed, as well as the TSLRIC principles of the Michigan PSC. The Department is satisfied that this methodology embodies the basic concepts of forward-looking cost-based pricing, and is consistent with the Department's competitive standard.

<sup>50</sup>ALJ Cost, p. 10.

<sup>51</sup>See DOJ Louisiana, p. 23. ALJ Cost, p. 26, puts it as follows:

vertical services.<sup>53</sup>

Table 6 shows that combining the general issues raised by the ALJ and the specific areas

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However, we are not persuaded by the use of CBGs as proposed by the intervenors is the best method for analyzing costs differences across the state. We question the necessity and practicality of setting rates based upon such small fragments of the state, and, instead, favor a method which utilizes a small number of more broadly classified density zones. Unfortunately, no party has presented such a proposal in these proceedings. Consequently, we reserve a final decision with regard to implementation of an appropriate method for geographic deaveraging, pending further proceedings in this matter and the opportunity for all parties to file proposals regarding appropriate "density" zones.

<sup>52</sup>DOJ Louisiana, p. 26

BellSouth offers no prices at all in Louisiana for one of the significant components of physical collocation -- space separation -- leaving the determination of such prices to negotiations on a case-by-case basis. For other components, such as space construction, BellSouth also intends to impose charges that have not been adequately demonstrated to be cost based...

The LPSC's ALJ concluded that BellSouth's rates for collocation should be subject to the same forward-looking cost standards applicable to pricing of interconnection and unbundled network elements generally, and proposes to use a collocation cost model offered by potential competitors...

Because its failure to commit itself to certain pricing principles raises significant competitive concerns -- i.e., raising the possibility of unreasonable prices and drawn out negotiations that have the effect of precluding competitive entry -- we cannot conclude that the pricing structure for collocation will permit efficient entry so as to fully and irreversibly open the local market.

See also, ALJ Cost, p. 55.

<sup>53</sup>DOJ Louisiana, p. 28,

Our concern with the pricing of vertical services does not go merely to whether a charge for vertical features should be imposed separately or bundled with the switch port charge, but also to the costs associated with purchasing them. The ALJ proposed not to adopt any permanent rate for vertical switching features, but to conduct further proceedings on the issue, in light of the limited opportunity the consultant had to analyze BellSouth's cost data, while using the consultant's recommended rate on an interim basis. The LPSC rejected this recommendation without explanation.

See also, ALJ Cost, p. 52.

**TABLE 6**  
**QUESTIONS RAISED ABOUT LOUISIANA SGAT PRICES**

INTERCONNECTION

TECHNOLOGY  
DEPRECIATION  
COMMON COSTS

UNBUNDLING

LOOP                      DEAVERAGING\*  
TECHNOLOGY  
DEPRECIATION  
COMMON COSTS

SWITCHING              TECHNOLOGY  
DEPRECIATION  
VERTICAL SERVICES\*  
COMMON COSTS

RECOMBINATION    GENERAL

RESALE

ORDERING              FALLOUT RATE

COLLOCATION           CONSTRUCTION\*  
OTHER COSTS\*\*

SOURCES: Chief Administrative Law Judge, Recommendation on 14-Point Checklist, Docket No. U-22252, August 14, 1997, Division of Communications and Division of Legal Services, Florida Public Service Commission, Memorandum, Docket No. 960786-TL - Consideration of BellSouth Telecommunications Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996, October 22, 1997, and Department of Justice, "Evaluation of the United States Department of Justice," Federal Communications Commission, In the Matter of Application by BellSouth Corporation, et. al. for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, September 30, 1997.

\*/ Both DOJ and the ALJ cite these factors

\*\*/ Only DOJ raises this point.

All other points are raised only the ALJ.

in which both the ALJ and the DOJ have concerns results in an extensive critique of the prices adopted by the LPSC. Each of the four specific areas of pricing covered in Section 252 of the Act is subject to question. The application to enter long distance should be rejected on these grounds alone.

## **B. NON-DISCRIMINATORY ACCESS**

The second condition set by Congress on BOC entry was non-discriminatory access to functionalities and network elements. Again, the Department of Justice stresses the critical problem that uncertainty of access to functionalities plays in retarding competition.

The Department's analysis of wholesale support processes flows, not simply from statutory requirements, but most fundamentally from our recognition that these processes are critical to facilitating competition. Inadequate processes will prevent competitors from providing the level of quality and timeliness that customers rightly expect from telecommunications providers, and faced with such shortcomings, customers will hold the competing carrier -- not the delinquent incumbent -- responsible for the failure. Because of this risk, competitive providers are unlikely to undertake entry on a significant scale when incumbents are offered only a paper commitment to provide the necessary support processes at some future point rather than adequate and reliable support processes.<sup>54</sup>

BST has performed poorly in making interconnection and access to parts of the network available on non-discriminatory terms (see Attachment 2 Chapter 3, Section A.2). DOJ offers the following observation with respect to one of the critical items on the checklist, combinations of unbundled elements.

Interconnect agreements and an SGAT that fail to state adequately the terms and conditions under which a BOC will provide unbundled elements so that they may be combined do not satisfy section 251 (c)(3). In light of the substantial competitive implications of this issue we believe that a BOC should be required to

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<sup>54</sup>DOJ Louisiana, p. 17.



(1) clearly articulate the manner in which it proposes to offer UNEs so that they may be combined, (2) demonstrate that its proposed method is reasonable and non-discriminatory, and (3) establish that it has a practical ability to process orders and provision unbundled elements that are to be combined by CLECs. In this application, BellSouth again fails to satisfy these requirements...

Given the recent litigation relating to the requirement to provide UNEs in a manner that enables competitors to combine them, the Louisiana Public Service Commission has yet to make any specific findings that BellSouth is providing unbundled network elements in a manner that allows requesting carriers to combine them to provide telecommunications services.

BellSouth states that it is open to negotiating at least some of the issues concerning the combining of UNE's. This is insufficient for a basic reason: outlining an undeveloped plan for enabling competitors to combine elements and offering to negotiate terms and conditions on a case-by-case basis do not commit BellSouth to any procedure -- let alone one that would be sufficient to satisfy section 251 (c)(3) and the checklist standard...

At present, Bell South has suggested that it may be willing to discuss other approaches, but has not made any binding commitments enabling a CLEC to combine UNEs in any other fashion.<sup>55</sup>

In South Carolina, DOJ added the observation that one of the most damaging problems is to start marketing then find that the incumbent cannot or will not deliver, forcing the competitor to alienate its potential new customers.

Since the vast majority of local subscribers are current customers of the incumbent, if switching of customers is impeded then entry -- through any of the three modes - - would be stopped dead in its tracks. In California, for example, MCI and AT&T's efforts to enter the market were frustrated when PacBell's systems for processing resale orders broke down, causing substantial delays before customer could be switched to competitive carrier and leading those companies to end their marketing campaigns.<sup>56</sup>

Competition simply cannot get started if competitors do not know what their costs will be

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<sup>55</sup>DOJ Louisiana, pp. 10..11..14.

<sup>56</sup>Schwartz, p. 20.

and have no assurances that when they win a customer they will be able to hook them up quickly and efficiently

The issue of non-discrimination has come to focus on the ability to support new entrant needs for interconnection, unbundled elements and resale at commercial scale. As the Department of Justice noted,

A mere paper promise to provide a checklist item, or an invitation to negotiate, would not be a sufficient basis for the commission to conclude the BOC "is providing" all checklist items. Nor would such paper promises constitute an appropriate basis for the department to conclude that the market had been fully opened to competition.<sup>57</sup>

The ALJ in Louisiana found that BST had not demonstrated its ability to deliver on its promises

BellSouth has not demonstrated to the Commission that its operational support systems, as provided for in its SGAT, can actually provide, at this time, non-discriminatory access to new entrants. There is no evidence in the record that BellSouth interfaces can perform as well as BellSouth claims they will and no evidence that access is non-discriminatory from the standpoint of the amount of time necessary to access the OSS and obtain the desired information or services. Further, BellSouth has not demonstrated that its OSS provides information on an equal, non-discriminatory basis, or that its interfaces are equally user friendly to both BellSouth and its competitors. Finally, BellSouth has not demonstrated its ability to increase the capacity of its systems sufficiently and in a time frame necessary to effectively serve competing providers. Accordingly, BellSouth's operational support systems cannot meet the non-discriminatory access requirements of checklist Item 2.

The Commission also has some concern regarding the capacity of BellSouth's various interfaces to handle the needs of new entrants... Again, however, BellSouth has not provided evidence of any testing results to demonstrate its ability to increase its capacity sufficiently and in a time frame to effectively serve competing providers.

The Commission further concludes that BellSouth's failure to offer non-

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<sup>57</sup>DOJ Louisiana, p. 9.

discriminatory access to its OSS necessarily impacts many of the other checklist items -- specifically, items 1, 4, 5, 6, 7, 8, 9 and 14, in that provision of interconnection access to unbundled network elements in accordance with the requirements of those items is similarly limited and rendered discriminatory by the lack of effective pre-ordering, ordering, provisioning, maintenance and repair, and billing methods and procedures. As the deficiencies of BellSouth's OSS have been discussed at great length here, the Commission will refrain from further discussion under the remaining elements.<sup>58</sup>

One of the primary responses to the discrimination problem that has been proposed by the FCC and the DOJ is to insist on rigorous performance measures. If discrimination is to be detected and prevented, they argue that a set of measures must be created which enables a comparison to be made between the treatment given to competitors and the treatment given to subsidiaries (separate affiliates or operating companies). Fully defined and implemented performance measurement systems are needed in order to carry out the nondiscriminatory requirements of the Act. BST's fall far short of what is required (see Attachment 2 Chapter 3, Section A.3).

First, BellSouth has not instituted performance measures that will enable it to demonstrate -- through objective criteria -- that it can provide wholesale performance at parity with its own retail performance where such a comparison can be made, and a meaningful opportunity to compete, where no retail counterpart is available. As we have stressed, performance measurement is an essential aspect of providing effective support systems, and although BellSouth has taken important steps in this regard, it is yet to institute the necessary range of measures to demonstrate that it has provided satisfactory support processes. Second, as explained in our South Carolina filing, BellSouth has failed to implement support systems that provide CLECs with access to the basic functionalities at parity with its own systems. BellSouth has attempted to explain away a number of the Department's concerns, but, in the short period of time since its filing, it has failed to make the necessary changes to provide such access. Finally, the Department remains unconvinced that the important BellSouth systems have been "stress tested" to establish the operational readiness -- i.e., that the systems can be relied on when used at foreseeable levels of demand...

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<sup>58</sup>ALJ Checklist Recommendation.

We examined whether a BOC has established (1) performance measures and reporting requirements so that wholesale performance can be measured; (2) performance standards, i.e., commitments made by the BOC to meet specified levels of performance (preferably backed up by liquidated damages clauses); and (3) performance benchmark, i.e., a track record of performance. These steps will permit an assessment of current performance and will enable competitors and regulators to more effectively address any post entry "back sliding" from prior performance through contractual, regulatory, or antitrust remedies.<sup>59</sup>

DOJ identified the 14 measures in Table 7 as missing in BST's Louisiana application.

## **B. INDIVIDUAL CHECKLIST ITEMS**

The extensive nature of the checklist reflects the fact that dismantling a century old monopoly that requires interconnection is a challenging problem (see Attachment 2 Chapter 14, Section B). The practical reality is easy to understand,

- o Imagine trying to enter the market and compete with the incumbent without being able to hook up to the existing network, so that customers cannot complete their calls to customers on the incumbents network.
- o Imagine having to enter the market by building a new network from scratch (trying to catch up with the hundred year head start of the incumbent company), or being required to rent pieces of the existing network (loops, cables, or switches) at terms and conditions that are discriminatory resulting in higher prices or lower quality.
- o Imagine the difficulty of attracting customers if directory assistance, emergency service (911), or operator services cannot be provided at quality equal to the incumbent services, and not having the ability to brand those services with the company's name.
- o Imagine having to require customers to change their numbers to switch companies, or to suffer degradation in service quality to keep their numbers.

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<sup>59</sup>DOJ Louisiana, pp. 19...31.

**TABLE 7**  
**OMISSIONS IN BELL SOUTH PERFORMANCE MONITORING**

- (1) PRE-ORDER SYSTEM RESPONSE TIMES -- FIVE KEY FUNCTIONS
- (2) TOTAL SERVICE OR CYCLE TIME
- (3) SERVICE ORDER QUALITY
- (4) SPEED OF ANSWERING -- ORDERING CENTER
- (5) AVERAGE SERVICE PROVISIONING INTERVAL
- (6) PERCENT SERVICE PROVISIONS OUT OF INTERVAL
- (7) PORT AVAILABILITY
- (8) COMPLETED ORDER ACCURACY
- (9) ORDERS HELD FOR FACILITIES
- (10) BILLING ACCURACY
- (11) BILLING COMPLETENESS
- (12) OPERATOR SERVICES SPEED OF ANSWER
- (13) DIRECTORY ASSISTANCE SPEED OF ANSWER
- (14) 911 DATABASE UPDATE TIMELINESS AND ACCURACY

- o Imagine having to ask new customers to wait longer to place their order and have it filled, or finding their number does not work when they expect it to, or having them receive multiple bills for the same service.

These are just a few of the problems that the DOJ, the ALJ and the Florida staff found in the current approach of BST. Out of the 14 points on the competitive check list which Congress imposed on the RBOCs, the Florida Staff concludes that BST has not met nine (see Attachment 2 Chapter 3, Section C). The ALJ in Louisiana actually added three more to the list, because BST has not provided non-discriminatory access to operating support systems. The ALJ also found that two items could be subject to manipulation of terms as guides are changed and that two items have not been made available at all technologically feasible points. Table 8 shows a summary of the areas where the BST application is deficient. The specific problems are derived from the framework that is developed in Part II. It is obvious that BST's application is severely deficient.

Table 9 presents a list of problems identified by the Florida staff in just one of the checklist items, BellSouth's resale obligation. This is checklist item xiv, as well as an obligation specifically identified in sections 251 and 252 of the Act. This is the path to competition that most competitors would be forced to take if the RBOCs achieved premature entry into the in-region long distance market. It is easy to see why competitors would have trouble getting into the local market. Similar barriers to entry can be found on the other two paths that the Act opened up, facilities-based competition and combination of unbundled network elements.

One conclusion is overwhelmingly clear from the analysis of the BST application

- o Local competition is not happening because the incumbent local exchange companies do not want it to and are resisting.

TABLE 8  
BELLSOUTH- LOUISIANA  
SECTION 271 [C](2)(B) COMPLIANCE  
COMPETITIVE CHECKLIST

	ITEMS													
	1	2	4	5	6	7	8	9	11	12	13		14	
FINAL RATES, TERMS, AND CONDITIONS														
LEGAL OBLIGATIONS	N												?	
STATE APPROVED	N												N	
COURT CASES	N													
INTERIM ORDERS	N	N												
USAGE RIGHTS	?													
COST-BASED RATES	N	N	N				N						N	
ACCESS TO INFORMATION														
PRE-ORDER	N	N											N	
ORDER		N											N	
PROVISION	N	N											N	
REPAIR AND MAINT.	N	N												
BILLING		N	N	N	N								N	
FULLY LOADED FUNCTION														
SUFFICIENTLY AVAIL	N	N								N			N	
DEPLOYED	N													
ACCESS IN VOLUME	N	N						N	N				N	
ASSISTANCE FOR USERS	N	N											N	
OPERATIONALLY READY														
TESTS/PILOTS														
INTERNAL														
THIRD-PARTY	?													
INTER-CARRIER	N													
PERFORMANCE STANDARDS														
AUTOMATED		N											N	
QUALITY/RELIABILITY	?	N											N	
EQUAL FOR ALL	N	N		N	N	N				N	N		N	
EXCLUSIONS	?	?											?	
PERFORMANCE ASSESSMENT														
INSTALLATION INTRVL	N	N	?										N	
INTERFACE &														
INTERNAL OSS		N											N	
ACCURACY		N											N	
HELD ORDERS	N	?	?										?	
BILL QUALITY		N	N	N	N								N	
REPEAT TROUBLE	?	?	?										?	
REMEDIES FOR NONCOMPLIANCE	N	N	N										N	

N =NOT IN COMPLIANCE, " " =NOT APPLICABLE, ? = COMPLIANCE UNCLEAR

Source: Derived from, Chief Administrative Law Judge, Recommendation on 14-Point Checklist, Docket No. U-22252, August 14, 1997, Division of Communications and Division of Legal Services, Florida Public Service Commission, Memorandum, Docket No. 960786-TL - Consideration of BellSouth Telecommunications Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996, October 22, 1997, and Department of Justice, "Evaluation of the United States Department of Justice," Federal Communications Commission, In the Matter of Application by BellSouth Corporation, et. al. for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, September 30, 1997.

TABLE 9  
PROBLEMS IN PROVISION OF NON-DISCRIMINATORY ACCESS  
TO RESOLD SERVICES IN THE BELL SOUTH REGION

OPERATING SUPPORT SYSTEM PROBLEMS

PRE-ORDERING

- 1: Multiple address validation for the same fields in different screens
- 2: No on-line customer credit checking capability and limited availability of customer services record information.
- 3: Requires human intervention
- 4: BST can reserve more telephone numbers than ALECs
- 5: Cumbersome and inefficient methods of locating long distance company selected by customers and product service information
- 6: Does not provide access to calculated due dates in the inquiry mode

ORDERING AND PROVISIONING

1. Do not have electronic capability at parity with BST's
2. No order summary screen exists
3. Intervenors cannot access or make changes to pending orders.
4. BST has not provided requesting carriers with the technical specifications of the interfaces.
5. Interfaces are not fully electronic or integrates.
6. Insufficient capacity to meet demand.
7. Insufficient testing and documentation.

MAINTENANCE AND REPAIR

1. A proprietary system that does not provide ALECS with machine-to-machine functionality
2. Interface lacks sufficient capacity to meet demand.

BILLING

1. BellSouth cannot render accurate bills for resold services

RESALE PROBLEMS

1. Voice mail service is not being provided on an unbranded basis
2. Disparity in conversion of customers
3. Manual ordering

Source: Division of Communications and Division of Legal Services, Florida Public Service Commission, Memorandum, Docket No. 960786-TL - Consideration of BellSouth Telecommunications Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996, October 22, 1997, pp. 263-283.



The DOJ analysis agrees with this assessment, although not at the same level of detail.

There are several problems that underlie this failure.

- o First, important terms and conditions upon which Bell South has proposed to open its network do not meet the requirement that they be just, reasonable and non-discriminatory.
- o Second, important terms and conditions are simply unknown and uncertain.
- o Third, even where the terms and conditions in its contracts (or tariffs) are just, reasonable and non-discriminatory on paper, BST has failed to fulfill their obligations. They have not lived up to the terms and conditions they have agreed to.
- o Fourth, BST has not instituted the means to assess compliance with the Act.

The DOJ summarizes the current situation with respect to the most fundamental question, interconnection of networks, as follows:

At this time, BellSouth faces no significant competition in local exchange service in Louisiana. Lacking this best evidence that the local market has been opened to competition, the Department cannot conclude our competition standard is satisfied unless BellSouth proves that significant barriers are not impeding the growth of competition in Louisiana. It has failed to do so in this application.<sup>60</sup>

The recommendation of the DOJ to reject BST entry under the circumstances is correct.

If these are the terms and conditions under which competitors must move forward, then meaningful competition will not be forthcoming and the 1996 Act will be a major failure. Not only should the FCC reject the application for entry into in-region interLATA services, but regulators need to go on the offensive, requiring incumbents to live up to their responsibilities and using all available sanctions where they do not.

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<sup>60</sup>DOJ Louisiana, p. 3.